

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

IVAN JONES,

Petitioner,

Case No. 3:07 CV 2495

-vs-

CLIFFORD SMITH,

MEMORANDUM OPINION
AND ORDER

Respondent.

KATZ, J.

This action was transferred to the United States Magistrate Judge for a Report and Recommendation. The Magistrate Judge filed his Report and Recommendation on September 23, 2008. Under the relevant statute:

Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.

28 U.S.C. § 636(b)(1)(C) (1982). In this case, the ten-day period has elapsed and no objections have been filed. The failure to file written objections to a Magistrate Judge's report and recommendation constitutes a waiver of a de novo determination by the district court of an issue covered in the report. Thomas v. Arn, 728 F.2d 813 (6th Cir. 1984) affirmed, 474 U.S. 140 (1985); see United States v. Walters, 638 F.2d 947 (6th Cir. 1981).

No objections have been filed and the Court has reviewed said Report and Recommendation, the findings and recommendations contained therein, and the record in this case. The findings and recommendations of the Magistrate Judge are well taken and there are no legal points which would be arguable on their merits in an appeal of this case. Furthermore, the

Court has determined sua sponte that no certificate of probable cause should issue in this case as any appeal would lack substantial merit.

It is therefore,

ORDERED, that the Report and Recommendation be, and hereby is, adopted as the Order of this Court. Petitioner's Petition is dismissed without prejudice.

FURTHER ORDERED that under 28 U.S.C. §1915(a), an appeal of this case should not proceed *in forma pauperis* as it would not be taken in good faith.

FURTHER ORDERED that a motion for certificate of probable cause under 28 U.S.C. §2253 is hereby denied *sua sponte*.

S/ David A. Katz
DAVID A. KATZ
U. S. DISTRICT JUDGE